IN THE SUPERIOR COURT OF CHATTOOGA COUNTY
STATE OF GEORGIA

DEVONIA TYRONE INMAN, a/k/a EDDIE LEE INMAN, Petitioner, v. KEVIN SPRAYBERRY, Warden, Hays State Prison, Respondent.	)	Habeas Corpus Case No. 2018CA42465

~~[PROPOSED]~~ ORDER

This matter is before the Court on Respondent Keven Sprayberry, Warden's ("Respondent" or the "State") Motion to Dismiss Petitioner Devonia Inman's ("Petitioner") Amended Application for Writ of Habeas Corpus. Also before the Court are: (1) Petitioner's Motion for Leave to Take the Deposition of Hercules Brown, a Person Confined in a Penal Institution; (2) Petitioner's Motion for Reconsideration of this Court's June 4, 2018 Order Granting Respondent's Motion for Protective Order and To Quash Notice of Deposition of Melinda Ryals, Esq.; and (3) Petitioner's Motion for Leave to Conduct Discovery Pursuant to O.C.G.A. § 9-14-48(a) (collectively, "Discovery Motions").[1]

Having considered the submissions and arguments of the parties and all other matters of record, and as further set forth herein, the Court DENIES Respondent's Motion to Dismiss. The Court GRANTS Petitioner's Motion for Leave to Take the Deposition of Hercules Brown, GRANTS Petitioner's Motion for Reconsideration, and GRANTS in part and DENIES in part as moot Petitioner's Motion for Leave to Conduct Discovery.

[1] Petitioner also filed a Motion for Leave to Take the Deposition of Kwame Spaulding, a Person Confined in a Penal Institution. Petitioner withdrew that motion without prejudice on July 1, 2019 because it appears that Mr. Spaulding is not currently incarcerated.

I. FACTUAL AND PROCEDURAL BACKGROUND[2]

On June 25, 2001, Petitioner was convicted of the September 1998 murder of Donna Brown, the manager of a Taco Bell restaurant in Adel, Georgia. Petitioner was sentenced to life imprisonment without the possibility of parole. There was no forensic or eyewitness evidence linking Petitioner to the crime, and numerous witnesses who provided testimony against Petitioner later recanted their testimony and indicated they had been pressured by law enforcement to implicate Petitioner.

At trial, Petitioner sought to introduce evidence from multiple witnesses that another man, Hercules Brown, had confessed to the murder of Donna Brown.[3] Hercules Brown was an employee and regular closer of the Taco Bell managed by Donna Brown. The trial court, however, excluded that evidence and did not permit Petitioner to argue to the jury that Hercules Brown was responsible for the murder.

A decade after Petitioner's trial, Petitioner sought to have a homemade ski mask that was found beneath the passenger seat of Donna Brown's car tested for DNA evidence. Those tests returned only one match: Hercules Brown. This DNA evidence was not available at the time of Petitioner's trial, but Petitioner alleges that other evidence showing Mr. Brown was the real killer was known to the prosecution team and concealed from him. For example, shortly after Donna Brown's murder, a replacement manager of the Taco Bell, Kim Brooks, was harassed by Mr.

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[2] While the factual and procedural history of this case is long and involved, the Court focuses herein only on those aspects most germane to the pending motions. Furthermore, on a motion to dismiss, the Court construes the facts alleged in the Petition in the light most favorable to Petitioner. *Copeland v. Miller*, 347 Ga. App. 123, 123 (2018) ("In deciding a motion to dismiss, all pleadings are to be construed most favorably to the party who filed them, and all doubts regarding such pleadings must be resolved in the filing party's favor.") (quoting *Stendahl v. Cobb Cty.*, 284 Ga. 525, 525 (2008)).

[3] Hercules Brown and Donna Brown are not related.

Brown about staging a robbery and stealing the night's cash receipts. In addition, Mr. Brown told Ms. Brooks he had done something bad and he was aware someone else was going to prison for what he had done. Ms. Brooks contacted law enforcement about Mr. Brown's behavior, but neither Ms. Brooks' name nor the information she provided were disclosed to Petitioner's counsel prior to trial. Furthermore, while Petitioner was awaiting trial, Mr. Brown committed numerous violent crimes in Adel, including an attempted armed robbery after which police found a homemade ski mask in Mr. Brown's car. This information also was not disclosed to Petitioner's counsel prior to trial. Mr. Brown currently is serving a sentence of life imprisonment without the possibility of parole for a November 2000 double murder in Adel.

Pursuant to O.C.G.A. § 9-14-41 *et seq.*, Petitioner filed a Petition for Writ of Habeas Corpus in this Court on January 20, 2018 and amended his petition on February 9, 2018. Petitioner's Amended Petition and supporting materials (collectively, the "Petition"), raising claims of prosecutorial misconduct, actual innocence, and ineffective assistance of counsel at trial and on appeal. On March 29, 2018, Respondent filed its Motion to Dismiss the Petition, to which Petitioner responded on May 1, 2018. The parties also have filed various motions addressing the scope of permissible discovery in this matter. The Court heard oral argument on all outstanding motions on December 12, 2018 and received supplemental authority thereafter.

II. THE STATE'S MOTION TO DISMISS

A. *Standard of Review*

Habeas corpus is a civil proceeding and, therefore, the Georgia Civil Practice Act ("CPA") applies in matters of pleading and practice. O.C.G.A. § 9-11-81. *See also Phagan v. State*, 287 Ga. 856, 858-59 (2010) (a habeas petition is a pleading within the meaning of the CPA) (citing *Schofield v. Meders*, 280 Ga. 865, 870 (2006)); *Mitchell v. Forrester*, 247 Ga. 622,

623 (1981) (CPA applies to habeas proceedings); *Johnson v. Caldwell*, 229 Ga. 548, 552 (1972) (same).

Notice pleading "is the hallmark of and prescribed by the CPA." *Phagan*, 287 Ga. at 859. "[I]t is well settled that the motion to dismiss [a habeas petition] for failure to state a claim should not be granted unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of the claim; and if within the framework of the complaint evidence may be introduced which will sustain a grant of relief to the plaintiff, the complaint is sufficient" and the motion to dismiss should be denied. *Dean v. Dean*, 229 Ga. 612, 614 (1972) (citations omitted); *see also Coen v. Aptean, Inc.*, 346 Ga. App. 815, 815-16 (2018) (applying the *Dean* standard).

B. ***Discussion***

The State argued for dismissal of the Petition on three principal grounds: (1) Petitioner's claims are untimely; (2) Petitioner's ineffective assistance of trial and appellate counsel claims are procedurally defaulted; and (3) Petitioner's claim of actual innocence is not recognized under Georgia law and is precluded by the trial court's prior findings on Petitioner's Extraordinary Motion for New Trial. The State's arguments for dismissal are without merit, and the Court addresses each of them briefly in turn.

1. <u>The Petition Does Not Reflect That Petitioner's Claims Are Untimely As a Matter of Law.</u>

First, the State failed to timely respond to the Petition, thereby waiving its statute of limitations defense. O.C.G.A. § 9-14-47 requires the State to "answer or move to dismiss" an application for writ of habeas corpus within 20 days after it is filed and docketed. The State filed its answer and Motion to Dismiss on March 29, 2018, over 45 days after the amended Petition

was filed and docketed. The statute of limitations is an affirmative defense that is waived if not timely raised. O.C.G.A. § 9-11-8(c).

Even if this affirmative defense had not been waived, however, the State has not established that the facts alleged in the Petition, taken as true as they must be at this stage, present no timely grounds for relief that could be proven. Petitioner has pleaded his claims pursuant to O.C.G.A. § 9-14-42(c)(4), which requires habeas proceedings to be brought within four years from "[t]he date on which the facts supporting the claims presented could have been discovered through the exercise of due diligence." O.C.G.A. § 9-14-42(c)(4).

Petitioner adequately alleges that his claims are timely because they were brought within four years of when the supporting facts could have been discovered through the exercise of due diligence. Petitioner also alleges that he had no knowledge of the supporting facts and could not reasonably have discovered them earlier, in part because the State failed to disclose these facts and, at trial, repeatedly represented to Petitioner and the trial court that there was no evidence whatsoever that Mr. Brown committed the armed robbery and murder of Donna Brown.

Whether Petitioner exercised reasonable diligence so as to satisfy the requirements of O.C.G.A. § 9-14-42(c) is necessarily fact-specific and not suitable for resolution on a motion to dismiss. *See, e.g.*, *Jackson v. State*, 284 Ga. App. 619, 620 (2007) ("questions of reasonableness are generally decided by the jury"). Furthermore, Petitioner's claims of prosecutorial misconduct and failure to disclose exculpatory evidence also bear on the degree of diligence required of Petitioner. *See Walker v. Johnson*, 282 Ga. 168, 170 (2007) (the State failed to comply with its constitutional duties through an incomplete and inaccurate response to discovery and *Brady* motions, inducing defense counsel to believe that certain taped statements did not

exist or contained no beneficial information). For all of these reasons, Respondent's argument that Petitioner's claims are untimely as a matter of law is without merit.

2. The Petition Does Not Reflect That Petitioner's Ineffective Assistance of Counsel Claims Are Barred by Procedural Default.

Contrary to the State's argument, Petitioner has adequately alleged "cause and prejudice" and manifest injustice such that the Petition does not reflect that his ineffective assistance claims are barred as a matter of law by procedural default.

A procedural default to asserting a claim of habeas corpus arises if a defendant fails to timely object to any alleged error or deficiency at trial or on appeal. *Turpin v. Todd*, 268 Ga. 820, 824 (1997). Procedural default, however, may be overcome if the petitioner shows (1) an adequate cause for failing to raise the issue earlier, and (2) actual prejudice resulting from the alleged error or errors. *Id.* The "cause and prejudice test" is coextensive with evaluation of the underlying merits of ineffective assistance claims. *See Hall v. Lewis*, 286 Ga. 767, 769 (2010). Moreover, "even if a petitioner fails to show cause for a procedural default, courts retain the power to grant relief under the writ if the procedural bar would work a miscarriage of justice." *Turpin*, 268 Ga. at 824 n.13. Taken as true and construed in the light most favorable to him, Petitioner's allegations concerning ineffective assistance of trial and appellate counsel are sufficient to survive the State's assertion of procedural default.

3. Petitioner Has Adequately Alleged His Actual Innocence Claim, Which Is Not Clearly Barred by Georgia Law or Collateral Estoppel.

Finally, the State argues that actual innocence relief is foreclosed to Petitioner because Georgia law does not support such a claim and, even if it did, Petitioner's actual innocence claim is barred by collateral estoppel. Specifically, the State argues that in denying Petitioner's

Extraordinary Motion for New Trial, the trial court found that the DNA test results showing the homemade ski mask was worn by Hercules Brown did not necessarily exonerate Petitioner.

While this DNA evidence may corroborate Petitioner's claims, it does not form the basis of Petitioner's claims for habeas relief. Instead, Petitioner's claims are based upon other evidence and arguments that were never before the trial court, either at trial or in post-trial proceedings. As a result, it is not apparent that collateral estoppel would preclude Petitioner's claims. *See, e.g.*, *Choi v. Immanuel Korean United Methodist Church*, 327 Ga. App. 26, 28 (2014) ("The general rule is that a former judgment binds only as to the facts in issue and events existing at the time of such judgment, and does not prevent a re-examination even of the same questions between the same parties, if in the interval the material facts have so changed or such new events have occurred as to alter the legal rights or relations of the litigants.") (citing *Durham v. Crawford*, 196 Ga. 381, 387 (1943)). Furthermore, it is not clear at this stage that Georgia law definitively precludes a freestanding actual innocence claim and arguably there is support for such a claim in the provisions of the habeas corpus statute, the state and federal constitutions, and numerous persuasive decisions of various state and federal courts. The ultimate viability of a freestanding actual innocence claim is an issue that may need to be decided after the hearing on the merits in this proceeding, but the Court is not prepared to rule as a matter of law that Georgia law forecloses such a claim regardless of how egregious the circumstances.

In sum, taken as true and construed in the light most favorable to Petitioner, Petitioner's allegations are sufficient to survive the State's Motion to Dismiss, which is hereby DENIED in its entirety. This matter should proceed to a hearing on the merits of the claims asserted in the Petition, after an opportunity for discovery in accordance with this Order.

III. PETITIONER'S DISCOVERY MOTIONS

A. *Standard of Review*

Georgia law authorizes depositions in habeas corpus cases, and the provisions of the Civil Practice Act apply to such depositions. O.C.G.A. §§ 9-11-81, 9-14-48. Under the CPA, depositions are permitted regarding "any matter, not privileged, which is relevant to the subject matter involved in the pending action, ...including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter." O.C.G.A. § 9-11-26(b)(1). To take the deposition of a person confined in a penal institution located within the State of Georgia, the requesting party must obtain leave of the Court and conduct the deposition "on such terms as the court prescribes." O.C.G.A. § 9-11-30(a).

Aside from depositions, other discovery is permitted in habeas corpus cases only with leave of the Court upon a showing of exceptional circumstances. O.C.G.A. § 9-14-48(a). Georgia courts have defined "exceptional circumstances" in other discovery contexts as circumstances "under which it is impracticable for the parties seeking discovery to obtain facts or opinions on the same subject by other means." *Bridgestone/Firestone N. Am. Tire, LLC v. Campbell Nissan N. Am., Inc.*, 258 Ga. App. 767, 768 n.3 (2002).

B. *Discussion*

Petitioner is entitled to take depositions, including the requested depositions of Melinda Ryals, Sgt. Reddick, Kim Brooks, and Kwame Spaulding, without leave of the Court. O.C.G.A. § 9-14-48(a)-(b); O.C.G.A. § 9-11-81. Accordingly, Petitioner's Motion for Reconsideration in connection with the deposition of Ms. Ryals is GRANTED and her deposition shall proceed, and

Petitioner's Motion for Leave to Conduct Discovery, insofar as it relates to the requested depositions of Sgt. Reddick, Ms. Brooks, and Mr. Spaulding, is DENIED as moot.[4]

With regard to the deposition of Hercules Brown, leave of this Court is required because he is confined in a penal institution. The Petition includes a claim of actual innocence based on the argument that Hercules Brown is the perpetrator of the crime for which Petitioner was convicted, and Petitioner further alleges that material information regarding Mr. Brown and the State's investigation of him as a suspect was withheld by the State. The Court therefore finds that the testimony of Hercules Brown is likely to be relevant to Petitioner's claims and his deposition is warranted. Accordingly, Petitioner's Motion for Leave to Take the Deposition of Hercules Brown, a Person Confined in a Penal Institution is hereby GRANTED on the terms proposed in Petitioner's Motion.

Finally, Petitioner seeks leave of the Court to serve written discovery and requests for production of documents on Melinda Ryals and the Cook County District Attorney's office. Petitioner asserts that he needs to review files belonging to both his trial counsel team and the District Attorney's office because such files are likely to contain information relevant to his claims that he cannot obtain elsewhere. Petitioner cites his repeated unsuccessful efforts to obtain the relevant information through formal and informal channels from both his trial counsel and the Cook County District Attorney's office, and the Court finds exceptional circumstances justifying the discovery requested. Accordingly, the Court GRANTS Petitioner's Motion for

[4] Even if the Court's permission were required for Petitioner to take the above-referenced depositions, the Court would be inclined to find exceptional circumstances warranting the depositions because Petitioner has been unable to obtain the information at issue through other means despite diligent efforts. Furthermore, tailored discovery will conserve judicial resources and streamline the subsequent proceedings in this matter.

Leave to Conduct Discovery and will allow Petitioner to serve requests for production of documents on Melinda Ryals and the District Attorney's office pursuant to O.C.G.A. §§ 9-11-34 and 9-14-48(a).

All discovery permitted herein shall be conducted in accordance with the provisions of the Civil Practice Act. In addition, Petitioner and Respondent are directed to submit for the Court's consideration a proposed scheduling order for a period of discovery to be followed by the evidentiary hearing in this matter.

SO, ORDERED, this 9 day of July, 2019.

Judge Kristina Cook Graham
Chief Judge, Lookout Mountain Judicial Circuit

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IN THE SUPERIOR COURT OF CHATTOOGA COUNTY
STATE OF GEORGIA

DEVONIA TYRONE INMAN, a/k/a EDDIE LEE INMAN,	)	
Petitioner,	)	
v.	)	Habeas Corpus Case No. 2018CA42465
KEVIN SPRAYBERRY, Warden, Hays State Prison,	)	
Respondent.	)	

CERTIFICATE OF SERVICE

This is to certify that on July 22, 2019, a true and correct copy of the foregoing Order was electronically filed using PeachCourt eFiling, which will automatically send email notification to all counsel of record, and by depositing a copy of the same in the United States Mail, with sufficient postage thereon, properly addressed to:

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This 22nd day of July, 2019.

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